

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EMIL WATSON,	§
	§ No. 298, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0312019673
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 21, 2010

Decided: July 19, 2010

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices

**ORDER**

This 19th day of July 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Emil Watson, filed an appeal from the Superior Court's April 28, 2010 order denying his third motion for postconviction relief. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is

manifest on the face of the opening brief that the appeal is without merit.<sup>1</sup>

We agree and affirm.

(2) The record reflects that, in August 2004, Watson, acting *pro se*, was found guilty by a Superior Court jury of Trafficking in Cocaine, Possession With Intent to Deliver Cocaine, Maintaining a Vehicle for Keeping Controlled Substances, Conspiracy in the Second Degree, and Possession of Drug Paraphernalia. He was sentenced as a habitual offender to life in prison.<sup>2</sup> Watson's conviction was affirmed by this Court on direct appeal.<sup>3</sup> Watson subsequently filed two postconviction motions, both of which were denied by the Superior Court. Watson appealed the Superior Court's denial of his first postconviction motion to this Court. We affirmed the Superior Court's decision.<sup>4</sup>

(3) In this appeal, Watson claims that "newly-discovered evidence" demonstrates that his counsel provided ineffective assistance. The evidence referred to by Watson consists of a signed plea agreement dated February 24, 2004, which, Watson claims, his counsel failed to return to the prosecutor.<sup>5</sup> Watson does not dispute that his claim is both time-barred<sup>6</sup> and

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<sup>1</sup> Supr. Ct. R. 25(a).

<sup>2</sup> Del. Code Ann. tit. 11, § 4214(b).

<sup>3</sup> *Watson v. State*, 892 A.2d 366 (Del. 2005).

<sup>4</sup> *Watson v. State*, Del. Supr., No. 338, 2007, Holland, J. (Mar. 12, 2008).

<sup>5</sup> The plea agreement encompassed a violation of probation ("VOP") in connection with a previous sentence as well as the new drug charges.

procedurally barred,<sup>7</sup> but insists that the prejudicial effect of his counsel's error warrants review of his motion on the merits,<sup>8</sup> including an evidentiary hearing,<sup>9</sup> and, presumably, vacation of his convictions.

(4) While the State may have made a plea offer and Watson may have signed a plea agreement in February 2004, the record in this case does not reflect that Watson ever seriously considered following through with a plea of guilty. Watson would have this Court accept that, having signed a favorable plea agreement that he now claims would have disposed of the case, he went forward with the VOP hearing and, several months later, represented himself at trial, never raising the issue of the favorable plea agreement even when questioned by the judge regarding his decision to represent himself. Then, five years later, having already filed two postconviction motions without mentioning the existence of the plea agreement, he came into possession of a copy of the plea agreement, realized that his attorney never sent the signed plea agreement to the prosecutor, and, on that basis, filed his third postconviction motion. Watson's claim based on "newly-discovered evidence" flies in the face of logic and self-interest.

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<sup>6</sup> Super. Ct. Crim. R. 61(i)(1).

<sup>7</sup> Super. Ct. Crim. R. 61(i)(3).

<sup>8</sup> Super. Ct. Crim. R. 61(i)(3)(A) and (B); Super. Ct. Crim. R. 61(i)(5).

<sup>9</sup> Super. Ct. Crim. R. 61(h).

Because the claim is simply not credible, the Superior Court's denial of Watson's postconviction motion must be affirmed.

(5) It is manifest on the face of the opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice